

The COURT COMPASS

NEWSLETTER OF THE MASSACHUSETTS JUDICIAL BRANCH



Supreme Judicial Court Chief Justice
Margaret H. Marshall

SJC Welcomes Comments on Visiting Committee Recommendations

By Chief Justice
Margaret H. Marshall
Supreme Judicial Court

I hope that you have had a chance to read the Report of the Visiting Committee on Management in the Courts, which is available on the courts' website at www.state.ma.us/courts.

As the Justices and I review the analysis and recommendations in depth, we are most interested in your thoughts and comments, as we move forward together to meet the challenges outlined so clearly in the Visiting Committee's Report. There will be opportunities for discussion, but we hope that you will share your

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Permanency Mediation Resolves Difficult Cases Over Children's Futures

"Jennifer," a six-year-old girl living with foster parents in central Massachusetts, has little idea that she is the center of an intensely emotional dispute similar to hundreds of cases occurring in Massachusetts each year. While in the care of her biological mother, Jennifer had suffered physical abuse resulting in head injuries that continue to affect her. The Massachusetts Department of Social Services (DSS) placed her with foster parents who soon decided they wanted to adopt her, which would require the termination of the biological mother's parental rights.

The DSS attorneys, however, were hesitant to proceed with a court case against the biological mother, who was unwilling to give up her child. No one had been identified as the perpetrator of the abuse. The single mother had subsequently given birth to Jennifer's three siblings, none of whom had shown any signs of abuse. While DSS case workers were committed to keeping the child out of what had been an abusive environment, DSS attorneys were not certain they would prevail through litigation to end the mother's parental rights. The only certainty of Jennifer's future appeared to be months of costly, emotionally draining confusion surrounding her case.

'Permanency mediation is cost effective, a good use of judicial resources, and it provides a permanent, safe environment for children in need more quickly than litigation.'

— Juvenile Court Chief Justice
Martha P. Grace

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initial reactions about the Committee's work with us now. You can direct your comments in writing to me at the SJC, or send an e-mail to LaDonna.Hatton@sjc.state.ma.us. I am most grateful for those individuals who have already shared their thoughts and ideas, and I look forward to reading what others have to say.

Under the leadership of J. Donald Monan, S.J., Chancellor of Boston College, and the other members whom I appointed last August to assess current management practices in the court system, the Visiting Committee offers specific recommendations in its Report to achieve managerial excellence in the future. The Committee also reaffirmed what the Justices and I have long recognized: there are countless committed, talented, and hardworking individuals in the court system across the Commonwealth who are eager to embrace change. We thank the many judges, court staff, legislators, executive branch officials, lawyers, bar leaders, and community members who provided critical insights to the Visiting Committee.

The Justices and I are reviewing the Report in detail and are inviting comments from all quarters of the Commonwealth. The Visiting Committee has made clear the urgency of the challenge. To improve the managerial structure of the courts, we must be steadfast in our efforts as we work collaboratively. In the coming weeks, the Justices and I plan to establish working groups to begin to organize the tasks ahead. The Justices and I are deeply grateful to receive your input as we work together to create a model court management structure and organization in which we and the public we serve can be truly proud. ■

*Permanency Mediation***Role of Permanency Mediation**

Such are the difficulties that permanency mediation has been designed to resolve. Court-connected permanency mediation is an alternative to litigation in which the Juvenile Court and Probate and Family Court refer cases to mediators with specialized clinical training. The mediators use a non-judgmental approach to bring together the biological family, prospective adoptive family, caregivers, attorneys, and agencies connected with a child in foster care to reach an agreement over the best permanent home for the child.

Permanency mediation encompasses two models. The Family Consultation Team approach is used for Care and Protection cases, in which a mediator helps the parties in the case determine what steps must occur for the child to be safely returned home, while simultaneously formulating an alternative permanent plan if reunification is not possible. The Cooperative Adoption Planning model is used for Termination of Parental Rights cases, in which the mediator helps the parties determine what role, if any, the biological parents may play in the child's upbringing.

"Permanency mediation is a process devoted to the welfare of the child and the needs of the family," explained Chief Justice for Administration and Management Barbara A. Dortch-Okara. "Children in foster care have already suffered much emotional stress, yet drawn-out

court cases to determine their permanent homes can prolong the trauma. Permanency mediation focuses everyone's attention on what's best for the child to quickly give them the stable, healthy environment that they need."

Successful Pilot Programs

Permanency mediation began in Massachusetts in 1995, when the Children's Services of Roxbury's Massachusetts Families for Kids (MFFK) program became one of

eleven programs across the country to receive funding from the W.K. Kellogg Foundation to assist children lacking a stable home environment. In 1998, with the active involvement of Juvenile Court Chief Justice Martha P. Grace and Probate and Family Court Chief Justice Sean M. Dunphy, the two Court Departments began pilot programs of referring cases to MFFK mediators in Berkshire, Essex,

and Hampden counties.

"We've always thought that permanency mediation was a tremendous idea," Chief Justice Grace said. "Once the pilot phase was complete, the analysis of it was better than even our wildest expectations. Permanency mediation is cost effective, a good use of judicial resources, and it provides a permanent, safe environment for children in need much more quickly than litigation."

Following the pilot programs, Chief Justice Grace and Chief Justice

'Permanency mediation helps all participants identify the level of contribution they can make to the child's life. If all parties remain focused on the needs of the child, birth parents can come to understand when they are unable to provide for the child on an ongoing basis.'

— Christine Yurgelun, Esq.,
Alternative Dispute Resolution
Coordinator for the Administrative
Office of the Probate and Family Court

Permanency Mediation

Dunphy strongly recommended that a court-connected permanency mediation program be implemented statewide. A group known as the Massachusetts Coalition on Permanency for Children, comprising court personnel, DSS representatives, attorneys from the Committee for Public Counsel Services and private firms, mediators, adoptive parents, and adult adoptees, also advocated for funding. The Legislature responded by funding court-connected permanency mediation in the fiscal year 2001 budget, and it has continued funding through the current fiscal year.

"The Probate and Family Court is proud to have been a collaborative partner in the development of this innovative approach to resolving contested child welfare cases," Chief Justice Dunphy said. "Permanency mediation has enabled many children in foster care to move more quickly into permanent homes without lengthy trials and appellate proceedings and has enabled them and their supporting families to achieve long-term stability."

In September, 2000, the Administrative Office of the Trial Court approved MFFK as the lead agency for all court referrals to permanency mediation services. MFFK personnel conduct mediations, provide the necessary specialized training for mediators of other approved, court-connected mediation programs, and supervise all court-connected permanency mediation sessions



Juvenile Court Chief Justice Martha P. Grace, left, and Probate and Family Court Chief Justice Sean M. Dunphy have been strong advocates for court-connected permanency mediation.

throughout Massachusetts. Soon after the selection of MFFK as the lead agency, Chief Justice Grace and Chief Justice Dunphy conducted a series of regional meetings to help court staff, social service personnel, attorneys, and other interested parties learn more about the process.

Jennifer's Future

In Jennifer's case, the Worcester Juvenile Court referred the dispute over terminating her biological mother's parental rights to permanency mediation. Lori Ryan, an MFFK regional supervisor who has mediated and supervised more than a thousand cases, oversaw the three-month effort to develop a permanent plan for Jennifer.

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"At first the foster parents wanted to have no contact whatsoever with the birth mother," she said. However, after some "shuttle diplomacy" by the mediator, the foster parents eventually agreed to a face-to-face, mediated session with the mother, and they met three times.

"Once there, they could see the mother as a human being. They previously hadn't been given any information about the mother," Ms. Ryan said. "They learned Jennifer's birth history, that the delivery had gone smoothly, that substance abuse had not been an issue, and they learned about the mother's and father's ethnic backgrounds."

During the sessions, the biological mother came to see that the foster parents were in a better position to care for Jennifer, and agreed

to let her be adopted. The adoptive parents also agreed to allow Jennifer to visit her biological mother and siblings twice a year, as long as no other adult besides the biological mother and adoptive parents was present.

"Everyone agreed that maintaining contact with the siblings was important," Ms. Ryan said. "As long as the safety of the child is assured, we don't have to cut them off completely from their biological families. When all attachments are broken off, there is a strong tendency for the child to have difficulty in forming meaningful attachments in the future." She added that Jennifer's



Judicial Branch Leaders Meet with Legislators to Discuss Budgetary Needs

Supreme Judicial Court Chief Justice Margaret H. Marshall, Massachusetts Appeals Court Chief Justice Christopher J. Armstrong, and Chief Justice for Administration and Management Barbara A. Dortch-Okara testified about the fiscal year 2004 budget before the Legislature's Joint Committee on Ways and Means on March 18. The reports by Chief Justice Marshall and Chief Justice Dortch-Okara may be found on the Judicial Branch website, www.state.ma.us/courts.

SJC Justice Roderick L. Ireland, in photo at left, Superior Court Chief Justice Suzanne DelVecchio, bar leaders from the Massachusetts Bar Association and the Boston Bar Association, and other attorneys also addressed legislators on March 18, during the MBA-sponsored Lobby Day at the Statehouse.

Permanency Mediation

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adoption likely would be final in several months, while a trial would not have begun for nine or ten months.

"I think everyone can appreciate that the process of determining that someone is an unfit parent is highly emotional," said Christine Yurgelun, Esq., the Alternative Dispute Resolution Coordinator for the Administrative Office of the Probate and Family Court. "Yet permanency mediation helps all participants identify the level of contribution they can make to the child's life. If all parties remain focused on the needs of the child, birth parents can come to understand when they are unable to provide for the child on an ongoing basis."

The process also gives birth parents who are losing custody of a child a greater opportunity to retain an appropriate level of contact with the child, ranging from simply receiving a photograph of the child to visitation rights.

Mediator qualifications

Given the complexity and emotions of parental rights cases, permanency mediation requires more time, and more specialized mediation skills, than other forms of Alternative Dispute Resolution. According to Mary LeBeau, the MFFK Project Director of Permanency Mediation Services, most permanency mediations take twenty to twenty-five hours, spanning three to five months.

MFFK has a staff of six permanency mediators, as well as sixty subcontractors in approved court-connected programs throughout Massachusetts. "Mediators come from all walks of life," she said, "although many have a background in either the law or therapy." In addition to having thirty hours of training in basic mediation, permanency mediators must have three years of experience in a child welfare field, twenty-four hours of adoption competency training, and a minimum of twenty-one hours of specialized permanency mediation training. All mediators also are required to take twelve

hours of continuing education each year and be evaluated by MFFK.

Statewide, the permanency mediation process was utilized in 248 cases referred by the Juvenile Court and the Probate and Family Court in fiscal year 2002. Ninety-nine cases resulted in agreements that placed a child in a secure home environment without the need for litigation. Withdrawal of a party from the strictly voluntary process resulted in the lack of agreement in many of the other cases.

"Even in the cases that do not result in agreements before a trial, permanency mediation can help clarify issues" Ms. Yurgelun said. "Or, because the participants may have established some level of contact, they may be able to agree on additional arrangements following a court decision. Permanency mediation will not resolve every conflict, but it does provide a very good opportunity for people to work together to define their commitments to the child and to ensure that the child's best interests and long-term needs are met." ■

COURTS IN THE COMMUNITY



Judges to Bring Law Day Program to Cambridge Rindge and Latin

Students at Cambridge Rindge and Latin School will have an opportunity to learn about the judiciary and the law from more than a dozen judges of the Appeals Court and several Trial Court departments on Law Day, May 1. Appeals Court Justice Fernande R. V. Duffy is organizing the day's events,

sponsored by the National Association of Women Justices, of which she is a Regional Director.

"We hope to encourage minority students to look at becoming a lawyer and possibly becoming a judge as career goals," Justice Duffy said. "The program will be a good introduction to the judicial system and to what judges do."

The half-day program will include a short presentation on a legal issue of

interest to students, such as a mock trial concerning a search of student lockers. Following the presentation, each judge will facilitate a discussion of the issue in small groups.

Children of Staff to Spend Day at Suffolk Juvenile Court

More than thirty children of parents working in the Suffolk Juvenile Court will spend a day of their April school vacation week learning about the Massachusetts court system as part of the national "Take Your Son and Daughter to Work Day" on April 24.

The day's activities, organized by Probation Officer Bonnie Asquith, will include a tour of the Edward W. Brooke Courthouse, presentations by court staff explaining their jobs, a mock trial conducted by Juvenile Court Judge John J. Craven, Jr., and a pizza lunch.

Student Justices, Clerks Visit SJC on Student Government Day

Eighteen high school students from schools throughout Massachusetts were designated student Justices and Clerks of the Supreme Judicial Court on Student Government Day, April 4.

The students learned about the role of the state's highest court and the appellate process during a lively question-and-answer session with SJC Justice Judith A. Cowin. The students also met with SJC Clerk for the Commonwealth Susan Mellen, SJC Clerk for Suffolk County Maura S. Doyle, and other SJC administrators during a "behind the scenes" tour of the Court.

Each year the SJC's Public Information Office organizes Student Government Day activities at the Supreme Judicial Court. Other students participate in the Executive and Legislative branches on Student Government Day. The program is sponsored by the state's Department of Education.



Photo courtesy of Tom Gorman, Braintree Forum

Quincy District Court First Justice Mark S. Coven, right, is greeted by Braintree Rotary Club President Walter McGrath before Judge Coven's speech to the Club in March.

Quincy District Court Judge Mark Coven Addresses Local Clubs

Quincy District Court First Justice Mark S. Coven addressed the Braintree Rotary Club in February and the Lions Club in March, as part of an ongoing effort to give community members information on the volume and variety of cases handled by the local court.

For example, Judge Coven describes a typical Friday session involving twenty-five restraining order cases and pre-trial conferences in thirty criminal cases.

"It is important for members of the community to understand the role their community court plays," he said.

Judge Coven speaks to community and school groups about once a month. His speech to the Rotary Club was aired on local cable television and received positive coverage in the Braintree Forum weekly newspaper. The Supreme Judicial Court's Public Information Office arranged the speaking engagement and invited local media to attend.

COMPASS POINTS



South American Delegation Visits Suffolk Superior Court

Twenty-four judges, attorneys, and court administrators from fourteen South American and Caribbean countries visited the Superior Court on March 11 during a program on the Rule of Law sponsored by the U.S. State Department.

The visitors heard a panel discussion on judicial discipline, featuring Superior Court Judge Margot Botsford, Chair of the Commission on Judicial Conduct; Superior Court Judge Carol Ball; Commission Member Robert Guttentag; and Commission Staff Attorney Francis A. McLoughlin, Jr. They also watched the juror orientation video that is shown to jury pools throughout the state, and saw a demonstration of the MassCourts case management system, conducted by Information Technology Project Executive and Superior Court Judge Timothy S. Hillman and IT Project Manager Susan Laniewski.

The visit was coordinated by Superior Court Bail Administrator Michael McEneaney.

Unrepresented Litigants Can Turn to Court Website for Help

To help litigants obtain legal assistance and navigate the court system, the Judicial Branch has created a new section of its Web site, www.state.ma.us/courts, with the assistance of the Probate and Family Court.

The site's "Self Help Center" opened in late January, and provides a central location where litigants may find useful information about the Probate and Family Court, Housing Court, District Court, and the Boston Municipal Court. For example, the Probate and Family Court section includes Web versions of pamphlets that offer tips on preparing for court

appearances, an explanation of the kind of help that court staff can provide, and lists of free legal resources available in each county.

"Many individuals are initiating and defending cases in the Probate and Family court with no legal assistance. As a result, litigants, and sometimes their children, lose valuable legal rights," Probate and Family Court Chief Justice Sean M. Dunphy said. "The pamphlets and website provide the information that people need to begin the search for the level of assistance with which they feel comfortable."

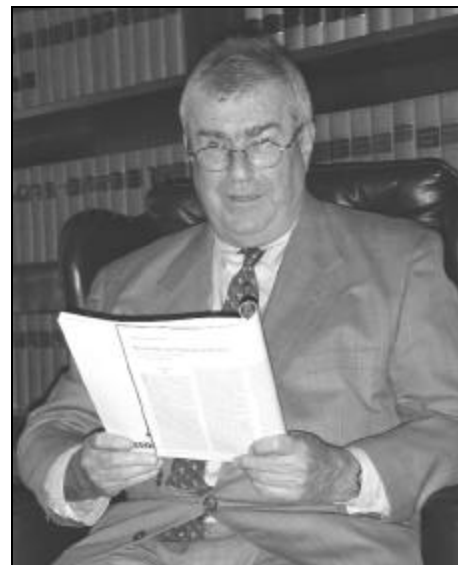
Probate and Family Court Judge Anthony R. Nesi, Chair of the Trial Court's Web Oversight Committee, added that the site will grow in the future. "We've really just scratched the surface," he said. "We are looking forward to adding more information from all the Trial Court departments."

After going on-line on January 27, the site was named the Boston Bar Association's Website of the Week in early February.

German Judge Learns About Massachusetts ADR Services

Hon. Freya Entringer, a judge from Hannover, Germany, and the head of a regional mediation project, spent March 26 in Boston learning about court-connected alternative dispute resolution services available in Massachusetts, Supreme Judicial Court rules on mediator ethics, and permanency mediation.

Judge Entringer met with Superior Court Judge Catherine A. White, a member of the Supreme Judicial Court Committee on Alternative Dispute Resolution; Timothy Linnehan, Esq., Administrative Office of the Trial Court Coordinator of ADR Services; and Juvenile Court staff.



**Boston Municipal Court
Judge Dermot Meagher**

Judge Meagher Gives Readers View of Life in BMC Courtroom

Boston Municipal Court Judge Dermot Meagher, a member of the Supreme Judicial Court's Judiciary/Media Committee, can also claim credentials as a writer.

Judge Meagher has written thirty stories about some of the people, whom he identifies with pseudonyms, who have appeared in his courtroom. Five of the stories are featured in the March, 2003, edition of Boston magazine, and Doubletake magazine printed other stories in its Spring 2001 and Winter 2002 editions.

Although the motivation for writing them was to preserve some of the fascinating stories he has learned from the bench, judges and court staff have told him the tales help create a better understanding of the human condition viewed through the court lens.

"The stories were not written to make a point," Judge Meagher said. "If there is a point, it is to better understand the humanity of everybody concerned, including the judge."

Business Litigation Session Becomes Permanent

The Superior Court Business Litigation Session's two-year pilot program has been an unqualified success, according to Superior Court Chief Justice Suzanne DelVecchio, who made the Session permanent in February. She also expanded the Session's jurisdiction on a pilot basis to hear cases from Essex, Middlesex, and Norfolk counties.

The Business Litigation Session was established in October, 2000, to provide a steady, efficient forum for the resolution of complex business litigation. Judge Allan van Gestel has been the Presiding Judge of the Session since its inception. Judge Margot Botsford is the second judge assigned to the Session.

"The Business Litigation Session is one of the most successful sessions in our Court," Chief Justice DelVecchio said. "It addresses the needs of very specialized types of cases, which are assigned to a single judge who remains with it through the life of the case. The Session offers quick access to the judge and immediate resolution of restraining orders and preliminary injunctions."

From its inception in October, 2000, through January, 2003, the Session accepted 610 cases and dis-



Superior Court Judge Allan van Gestel, right, has been the presiding Judge of the Business Litigation Session since its beginning in October, 2000. Judge Margot Botsford was assigned to the Session in January 2002.

posed of 374. Attorneys who have appeared in the Session report a very high level of satisfaction with it.

According to an independent survey commissioned by the Business Litigation Resource Committee, an advisory panel of fourteen attorneys appointed by Chief Justice DelVecchio, 94 percent of respondents were satisfied with the BLS judges' preparation; 91 percent were satisfied with the Session's firmness of schedule; and 87 percent were satisfied with the promptness and efficiency of emer-

gency motion rulings made in the Session.

Judge van Gestel notes that a key distinction of the Session is flexibility in scheduling the events of a case.

"Judge Botsford and I can hold a hearing on an injunction on a day's notice. It's usually harder to get the lawyers together than it is to fit the hearing into our schedules."

From the outset, Judge van Gestel and Judge Botsford are able to set a schedule for each case without using the standard tracking orders used in other civil sessions.

"In regular sessions, there is a presumption about how long cases should take," Judge Botsford said.

"We don't have any presumptions that a certain kind of case is supposed to take a certain length of time."

Judge van Gestel explained, "As soon as all the parties are in the case, we have a scheduling conference with the lawyers. The case goes to trial when the parties involved want to get to trial."

With the expansion of venue in March, parties in cases originating in Essex, Middlesex and Norfolk counties also have the opportunity to take advantage of the Business Litigation Session's expertise and scheduling flexibility.



AOTC Holds Hearings on Proposed Court Interpreter Procedures

The Administrative Office of the Trial Court's Office of Court Interpreter Services held public forums in five cities to hear comments concerning proposed Standards and Procedures for the use of interpreter services in the Trial Court. In attendance at the hearing in Lawrence on February 12, from left, are OCIS Program Manager for Training Leonor Figueroa, AOTC General Counsel Alec Gray, Esq., Lawrence District Court Clerk-Magistrate Keith E. McDonough, OCIS Manager Gaye Gentes, and District Court Regional Coordinator Darryl G. Smith.

Russian Delegation Studies Judiciary/Media Relations During Massachusetts Visit

Ten Russian judges and journalists studied the Massachusetts court system and its relationship with the media during a week in March in which they met with members of the Massachusetts judiciary and media in the Boston area and in Springfield.

In addition to visits to the Supreme Judicial Court, Superior Court, U.S. District Court, the Springfield Union-News, New England Cable News, Harvard Law School, and the law firm of Bingham McCutchen, the delegation also took part in a meeting of the SJC Judiciary/Media Committee.

In the photo, the two Committee Co-Chairs, SJC Justice John M. Greaney, standing at center left, and Springfield Union-News Publisher Larry McDermott, center



right, welcome the visitors and explain the role the Committee plays in facilitating communication between the judiciary and media.

The Russians' busy itinerary was planned and coordinated by Joan Kenney, SJC Public Information Officer, and Superior Court Judge Paul A. Chernoff.

CALENDAR

APRIL

- 17 Judicial Institute: "Command Spanish," for Trial Court support staff, from 8:30 a.m. to 1:00 p.m. in Boston. (Program also will held April 24.)
- 17 Flaschner Judicial Institute: "The Trial Judge," a discussion of former SJC Justice Henry T. Lummus' class booklet titled "The Trial Judge," from 5:00 p.m. to 7:30 p.m. in Springfield. (Program also will held April 30 and May 7 in Boston.)
- 25 Flaschner Judicial Institute: "John Marshall and the Heroic Age of the Supreme Court," a reading and discussion program led by U.S. District Court Judge Douglas P. Woodlock and R. Kent Newmyer, from 5:00 p.m. to 7:30 p.m. in Boston.
- 30 Judicial Institute: "The Americans with Disabilities Act: An Overview," for Trial Court personnel, from 8:30 a.m. to 4:00 p.m. in Bridgewater. (Program also will be held May 14 in Tyngsboro and June 4 in Shrewsbury.)

MAY

- 1 Law Day: Court, school, and community programs scheduled throughout the state.
- 6 Judicial Institute: "Working Under Stress," for Trial Court support staff, from 9:00 a.m. to 4:00 p.m. in Devens. (Program also will be held May 7 in Salem.)
- 20 Flaschner Judicial Institute: "Attorney Impairment Issues in the Court," from 2:00 p.m. to 4:30 p.m. in Brockton.
- 22 Judicial Institute: "Diversity Training," for all Trial Court personnel, from 8:30 a.m. to 4:00 p.m. in Worcester. (Program also will be held June 12 in Randolph.)

JUNE

- 4 Judicial Institute: "The Judge as Professional Communicator: A Seminar on Judicial Demeanor," for all Trial Court judges, from 8:30 a.m. to 4:30 p.m. in Boylston.

For more information on Judicial Institute programs, call (617) 788-6775.
For more information on Flaschner Judicial Institute programs, call (617) 226-1565.

The Court Compass

The Court Compass is a quarterly publication written and produced by the Public Information Office of the Massachusetts Supreme Judicial Court. Please send questions, comments, ideas, or letters to Joan Kenney, Public Information Officer, or to Bruce Brock, Publications Specialist.

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